

IT 97-13

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
v.)	No.
)	
TAXPAYER, an Illinois)	
Corporation,)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: WITNESS, former president of TAXPAYER, Inc., appeared on behalf of the taxpayer.

Synopsis:

This matter comes to be heard on the timely protest to the issuance of a Notice of Deficiency by the Department of Revenue on July 5, 1996 against TAXPAYER, Inc. in the amount of \$646.80 inclusive of penalties and interest.¹ Due to the retirement of the administrative law judge who originally heard this case, I am concluding this matter under my authority as Chief Administrative Law Judge. At issue is the question of whether this corporate taxpayer failed to file a return for and/or is liable for withholding taxes for the second quarter of 1993, ostensibly collected from employees and not remitted to the Department. On the basis of a lack of any evidence being presented by the taxpayer, it is respectfully recommended that this matter be resolved in favor of the Department.

Findings of Fact:

¹. Although the taxpayer's protest indicated that a hearing was not requested as part of any reconsideration of this matter, TAXPAYER, Inc. was nevertheless served with a Notice of Hearing which resulted in WITNESS's appearance.

1. The prima facie case of the Department and all jurisdictional prerequisites was established by the admission into evidence, without objection, of the Notice of Deficiency, taxpayer's protest, Notice of Hearing and Certificate of Service. (DOR Exs. 1, 2, 3, 4)

2. In response to the prima face case, the taxpayer, through its former president, presented no documentation of any kind or nature which would or would tend to rebut the initial determination of tax due.

3. Taxpayer's representative, WITNESS assumed that all taxes had been paid and that his accountant had taken care of any obligations owed the State. (Tr. pp. 8-10) Although the corporation purportedly went through Chapter 7 liquidation proceedings in bankruptcy in mid-1993, no pleadings, forms, letters or other documentation to that effect was provided. (Tr. pp. 5-6)

4. No reasonable cause was shown for failure to file returns as required by law.

Conclusions of Law:

A Notice of Deficiency was issued against the above named taxpayer for liabilities established pursuant to Section 704 and 705 of the Illinois Income Tax Act, which provides in pertinent part:

Employer's Liability For Withheld Taxes. Every employer who deducts and withholds or is required to deduct and withhold tax under this Act is liable for such tax. for purposes of assessment and collection, any amount withheld or required to be withheld and paid over to the Department, and any penalties and interest with respect thereto, shall be considered the tax of the employer. 35 ILCS 5/705

Under the terms of Section 904 of the Illinois Income Tax Act, the Notice of Deficiency is prima facie evidence of the correctness of the amount of tax due as shown therein. See also, A.R. Barnes and co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). In order to overcome the presumption of validity attached to the Department's determination, the taxpayer must produce competent evidence identified with its books and records showing that the Department is incorrect. Oral testimony in this regard is insufficient. Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist 1978).

In the present situation, the representative of the corporate taxpayer could provide no indicia of proof which would tend to rebut or cast doubt on the primacy of the Department's case. Although WITNESS asserts that all efforts were taken to assure that taxes were paid and it was assumed that the present notice was all a mistake, those notions, in and of themselves, cannot act to overcome the presumption of sums held to be due. In the absence of any sort of documentation that either the Department is in error or that the liability is somehow discharged, I am forced to conclude that the Notice of Deficiency should be affirmed and it is so recommended.

Richard L. Ryan
Chief Administrative Law Judge

7/2/97